

83-88-I

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STATE HOUSE ANNEX

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CONCORD, NEW HAMPSHIRE 03301-6397

July 21, 1983

Mr. John A. King, Director
Department of Probation
11 Depot Street
Concord, New Hampshire 03301

Dear Mr. King:

On July 6, 1983, you asked our opinion as to the procedure to be followed for the appointment of municipal probation officers until the new commissioner of corrections has been appointed as authorized by Chapter 461 of the Laws of 1983 and has established minimum qualifications for municipal probation officers required by RSA 504:21 as inserted by 1983, 461:21.

It is our informal opinion that the procedure requiring approval of the appointments by the board of probation continues until the effective date of the new department of corrections, established under Ch. 461.

The statutory provision governing the appointment of municipal probation officers that was in effect prior to Chapter 461 is RSA 504:13. This section gives the district courts the power to appoint municipal probation officers but also states:

"No municipal probation officer shall qualify for office until his appointment thereto has been approved by the board (of probation)."

This provision was not amended or repealed by Chapter 461 of the Laws of 1983, which establishes the new department of corrections. Chapter 461, section 20 did, however, enact the following section, effective July 1, 1983:



"504:21 Municipal Probation Officers. The district courts may appoint one or more qualified municipal probation officers for their respective courts. The commissioner of corrections, pursuant to RSA 541-A, and after consultation with the state personnel department, shall adopt rules specifying the minimum qualifications for such municipal officers. All municipal officers shall meet such minimum qualifications. The appointing court shall certify to the commissioner in writing that a municipal officer meets such minimum qualifications before the officer is appointed. The commissioner shall maintain a record of the appointments of all municipal officers and the certification of their qualifications."

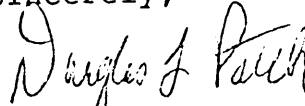
Under the new provision, the commissioner must establish minimum qualifications for municipal probation officers, but he does not give final approval to an appointment as the board did under RSA 504:13.

Although Chapter 461, section 2 provides that the board of probation is to be abolished and the tenure of the members is to terminate on the effective date of the act, section 22 provides that if House Bill 1 of the 1983 session becomes law, "any reorganization, transition or implementation provisions of this act shall be superseded by any conflicting provisions of House Bill 1." Under the provisions of HB 1, now Chapter 372 of the 1983 session laws, the transfer or abolition of each agency transferred or abolished by the General Court will become effective following approval of an implementation plan by the Joint Committee on Reorganization. The abolition or transfer cannot take place until a plan has been established for the transition and implementation of the reorganization that will result in the Department of Corrections.

Since Chapter 461 provides that the provisions of HB 1 supersede conflicting provisions in Ch. 461, we must interpret that to mean that the board of probation will not be abolished until the implementation plan is approved. RSA 504:21 establishes a new procedure for the appointment of municipal probation officers, in effect transferring the authority to appoint to the district courts, subject to the minimum qualifications established by the commissioner. Because the transfers provided for under Ch. 461 do not take effect until the date established under the procedures in HB 1, the new procedure under RSA 504:20 does not become effective until the date set for the operation of the new department of corrections pursuant to Laws 1983, Ch. 372, section 5, II. Until that time, the State Board of Probation remains in effect and exercises the powers set forth in RSA 504:13.

I trust this has been responsive to your question. Please let us know if you have any further questions.

Sincerely,



Douglas L. Patch
Assistant Attorney General
Division of Legal Counsel

DLP:ab

cc: His Excellency, John H. Sununu
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